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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,343	05/20/2002	Takao Yoshimine	450101-03178	8796

22850 7590 11/16/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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ALEXANDRIA, VA 22314

EXAMINER

CHEA, PHILIP J

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/019,343

Applicant(s)

YOSHIMINE, TAKAO

Examiner

Philip J. Chea

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

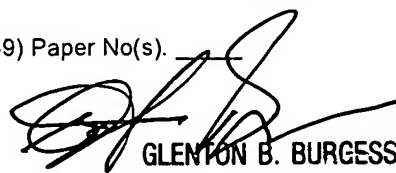
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 8-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

DETAILED ACTION

This Action is in response to an After Final filed October 20, 2005. Claims 8-14 are currently pending.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. A program-storing medium cannot be considered tangible if the medium is contained on communication medium such as cable or radio communications (e.g. a carrier wave, or transmission signal) mentioned in the specification. Therefore, the claim is lacking statutory subject matter.

The claim is non-statutory because the program-storing medium can be a carrier wave or transmission signal. The fact that it is for use with a computer does not make the intangible medium statutory.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,13,14 are rejected under 35 U.S.C. 102(e) as being anticipated by Barraclough et al. (US 6301607), herein referred to as Barraclough.

As per claims 1,13,14, Barraclough discloses a data-providing apparatus attached to a plurality of user apparatuses over a network, said data-providing apparatus comprising:

a receiving unit configured to receive data transmitted from the plurality of said user apparatus (see column 2, lines 39-49, where web server inherently contains a receiving unit to accept the data, and implicitly, if not inherently, receives data from more than one user);

a user contents control unit configured to control recording of the data received by the receiving unit into a recording area corresponding to each user apparatus (see column 2, lines 46-49, where parsing and posting implies a recording media to web page);

a shared contents control unit configured to control the recorded contents set to be shared by a user who transmits contents (see column 2, lines 50-61, where a shared contents control unit is implied if not inherent with the selection of individuals to share data); and

a data-supplying unit configured to supply data set to be shared to the user apparatus in response to a demand made by the user apparatus (see column 2, lines 56-61).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barraclough as applied to claim 8 above, and further in view of Bubie et al. (US 6453078), herein referred to as Bubie.

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Although the system disclosed by Barraclough shows substantial features of the claimed invention (discussed above), it fails to disclose thumbnail-generating means for generating a thumbnail corresponding to the data received by the receiving unit, and thumbnail-transmitting means for transmitting the thumbnail to a second data-processing apparatus.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Barraclough, as evidenced by Bubie.

In an analogous art, Bubie discloses a system for generating thumbnails from an internet-based picture service (see column 4, lines 25-33), further showing thumbnail-transmitting means for transmitting the thumbnail to a second data-processing apparatus (see column 4, lines 35-40).

Given the teaching of Bubie, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Barraclough by generating and transmitting thumbnails, such as disclosed by Bubie, in order to preview multiple pictures in a manageable viewing area.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barraclough as applied to claim 8 above, and further in view of Neel et al. (US 5,838,314).

As per claim 10, although the system disclosed by Barraclough shows substantial features of the claimed invention (discussed above), it fails to disclose that the shared determining whether the data should be paid for its use, when the data is supplied to a second data-processing apparatus.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Barraclough, as evidenced by Neel et al.

In an analogous art, Neel et al. disclose a video service system that provides video signals for programming via satellite link or broadband transmission links further disclosing determining whether data should be paid for its use, when the data is supplied to a second data-processing apparatus (see column 6, lines 7-25, where watching an advertisement instead of paying for the video programming is like getting a credit from the data-processing apparatus for watching the advertisement).

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Given the teaching of Neel et al., a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Barraclough by determining whether data should be paid for its use, such as disclosed by Neel et al., in order to give a user an alternative to paying for movies.

As per claim 11, Barraclough in view of Neel et al. further disclose the shared contents control unit further determines a fee for the data when the data is supplied to a second data-processing apparatus (see Neel et al. column 6, lines 7-25).

As per claim 12, Barraclough in view of Neel et al. further disclose that the fee is an amount that the data-processing apparatus needs to pay to the second data-processing apparatus when the data is supplied to the second data-processing apparatus (see Neel et al. column 6, lines 7-25).

Response to Arguments

7. Applicant's arguments filed October 20, 2005 have been fully considered but they are not persuasive.

(A) Applicant contends that the applied art does not teach, disclose or suggest a receiving unit configured to receive data transmitted from a plurality of user apparatus, and a user contents control unit configured to control recording of the data received by the receiving unit into a recording area corresponding to each user apparatus.

In considering (A), the Examiner respectfully disagrees. The system disclosed by Barraclough shows a server capable of receiving data uploaded by a sender, wherein the sender is able to share the data to selected individuals. Although it is not expressly stated that there are a plurality of senders, it is inherent, if not implied, that the server keeps an account (separate storage area) for each sender that uploads data to be shared in order to keep the pictures separate from other senders that may be uploading their pictures.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip J. Chea whose telephone number is 571-272-3951. The examiner can normally be reached on M-F 7:00-4:30 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Philip J Chea
Examiner
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PJC 11/8/05